



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 4, 2004

Mr. Terence Murphy
Commissioner
Hebron Bridgewater Refuse
Disposal District
297 Mayhew Turnpike
Bridgewater, NH 03222

Re: Docket No. AO ARD 04-002 – Administrative Order by Consent Agreement
Docket No. AF 04-003 - Administrative Fine by Consent Agreement

Dear Mr. Murphy:

Enclosed for your records is a copy of the Administrative Order by Consent Agreement ("AOC"), and the Administrative Fine by Consent Agreement ("AFC") in this matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on May 4, 2004. Please note that section V, paragraph 3 of the AOC requires that the Hebron Bridgewater Refuse Disposal District ("the District") make a cash donation in the form of a certified check to the Hebron Village School in the amount of \$1,500 within thirty (30) days of the effective date of the AFC. Please ensure that a copy of the certified check is forwarded to my office no later than June 3, 2004.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

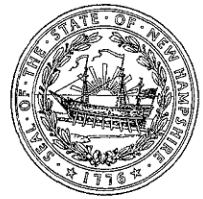
Sincerely,

Michael Sclafani,
Legal Assistant

cc: Robert R. Scott, Director, DES Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Pamela G. Monroe, DES ARD
Michael O'Brien, DES ARD
Richard Reed, DES WMD
DES Public Information Officer
R. Kurowski, USEPA, Region I
Town of Hebron, Selectmen's Office
Town of Bridgewater, Selectmen's Office
Maureen Smith, NH DOJ



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Commissioner

Hebron Bridgewater Refuse
Disposal District
297 Mayhew Turnpike
Bridgewater, New Hampshire 03222

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 04-003

I. INTRODUCTION

1. This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and the Hebron Bridgewater Refuse Disposal District pursuant to RSA 125-C:15,I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, P.O. Box 95, Concord, NH.
2. The Hebron Bridgewater Refuse Disposal District ("the District") consists of the Town of Hebron and the Town of Bridgewater, New Hampshire which are duly constituted municipalities of the State of New Hampshire, having a mailing address of 297 Mayhew Turnpike, Bristol, New Hampshire.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. The District operates a municipal waste incinerator and burn pile located at 290 Dick Brown Road, Bridgewater ("the Facility").
4. Env-A 1001.04 (effective July 10, 1996), required municipalities to obtain an authorization from the Division prior to the burning of brush or untreated wood from the construction or demolition of a building.

5. On November 28, 2000 and annually thereafter up to calendar year 2001, DES issued *Authorization to Burn Brush and Untreated Wood* (No. 13879) ("the Authorization") to the District. The Authorization states that only brush and untreated wood can be burned and in accordance with N.H. Admin. Rule Env-A 1000.
6. Env-A 101.54 defines "brush" as tree tops, limbs, saplings and tree cuttings that are five inches in diameter or less.
7. Env-A 101.286 defines "untreated wood" as any timber, board or sawn dimensional lumber, which has not been treated, coated or preserved.
8. On June 25, 2001, DES sent the District a letter. The letter stated that on June 20, 2001 that DES personnel performed an inspection at the Facility and that the following non-conforming material had been burned: plywood, pressure treated wood, painted wood, and wood greater than 5 inches in diameter.
9. On June 27, 2001, DES personnel performed a follow-up inspection at the Facility and documented in the *Notice of Inspection* report that the District again burned non-conforming materials at the Facility. On June 29, 2001, as follow-up to the inspection, DES sent a letter to the District addressing the issue of burning non-conforming materials at the Facility.
10. On September 27, 2002, DES personnel attended a meeting at the Facility to discuss the District's plan to replace its existing incinerator with a new incinerator. During that meeting, DES personnel observed a large pile of construction and demolition debris at the Facility and inquired as to how the District planned on disposing of the materials. DES was told by representatives of the District that the construction and demolition debris would not be burned and that it would be disposed of properly.
11. On December 31, 2002, the Authorization expired and was not renewed.
12. On March 2, 2003, DES was notified by personnel from the New Hampshire Department of Resources and Economic Development that the District was burning construction and demolition debris at the Facility.
13. On March 3, 2003, DES personnel performed an inspection at the Facility and inspected the burn site. DES personnel observed that the construction and demolition pile was burning and documented the charred remains of the following non-conforming materials: painted wood, sheetrock, wire, wafer board, plywood, pressure treated lumber, and carpeting.
14. On March 10, 2003, DES received a letter from the District regarding the March 2, 2003 incident. In the letter, the District stated that the construction and demolition pile was supposed to be separated and burned and the only explanation for burning the non-conforming material was that it was expedient to do so because the pile was frozen. The letter also stated that the District acknowledged that burning this material was a violation of DES rules.

15. On March 12, 2003, DES amended Env-A 1000 *Prevention, Abatement, and Control of Open Source Air Pollution*. The rule no longer requires municipalities to obtain an authorization to burn brush and untreated wood as long as the open burning is conducted in accordance with Env-A 1001.05.

IV. ALLEGATIONS

1. The District violated Env-A 1001.04 (effective July 10, 1996) by failing to obtain an authorization to burn brush and untreated wood.
2. The District violated Env-A 1001.04 (effective March 12, 2003, formerly Env-A 1001.03(c)(4)) by burning items other than brush and untreated wood at the Facility on March 2, 2003.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. The Division has determined the violation identified in Paragraph IV.1 above, to be a minor deviation from the requirements with minor potential for harm. RSA 125-C:15, I-b specifies a fine range of \$100 to \$1,000. However, since the Division revised the open burning rules and it is no longer necessary to obtain written authorization to conduct open burning, the Division is not seeking a fine for this violation.
2. The Division has determined the violation identified in Paragraph IV.2, above, to be a major deviation from the requirements with major potential for harm. RSA 125-C:15, I-b specifies a fine range of \$1,501 to \$2,000. The Division has determined that the District burned items other than brush and untreated wood on March 2, 2003. The Division is seeking a fine of \$2,000.
3. In exchange for credit towards the administrative fine in Paragraph V.2, the District agrees to make a cash donation to the Hebron Village School ("the School") in the amount of \$1,500 for the purpose of a paper recycling program or other approved Supplemental Environmental Project. The payment shall be in the form of a certified check made payable to the School within thirty (30) days of the effective date of this Agreement.
4. **By January 25, 2005**, the School shall submit to the Division documentation that the funds were applied to a paper recycling program or other approved Supplemental Environmental Project.
5. In the event that the District fails to perform any of the items listed within the time frames specified in Paragraph V.3, then payment in the amount of \$1,500 shall be due and payable upon notice from DES, without opportunity for further hearing or appeal in accordance with Paragraph V.7 below.
6. Of the proposed \$2,000 fine the Division agrees to suspend \$500 contingent upon no future violations by the District of environmental laws, and rules including Env-A 1000 governing the burning of untreated wood for 2 years from the effective date of the Agreement. Further, prior to burning at the Facility, the burn pile shall be inspected for its content by a competent person trained on permissible burning.

7. If the District fails to comply with the terms set forth in Paragraph V.5. above, then regardless of when the determination is made that the violation occurred, the suspended portions in the amount to \$500 shall be due and payable upon notice from DES, without opportunity for further hearing or appeal in accordance with Paragraph V.7 below.

8. Any payment that becomes due pursuant to Paragraph V.2 above shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

9. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

10. By executing this Agreement, the District waives its right to a hearing on or any appeal of the administrative fines identified in Section V. Paragraphs 1 through 3, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. The District shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of the District and alleging violations of the New Hampshire Code of Admin Rules enumerated herein, or in any proceeding before DES to enforce this Agreement.

11. The effective date of this Administrative Fine by Consent shall be the date on which it is signed by the authorized representatives of the District, the Director of the Air Resources Division and the Commissioner of DES.

12. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

The Hebron Bridgewater Refuse Disposal District

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By: Duly Authorized
Hebron Bridgewater Refuse Disposal District

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Hebron Bridgewater Refuse Disposal District

4/28/04
Date

Department of Environmental Services

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Robert R. Scott, Director
Air Resources Division

4 MAY 04
Date

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[Signature]
Michael P. Nolin, Commissioner
Department of Environmental Services

05 04 04
Date

cc: G. Rule, DES Legal Unit
R. Reed, DES-WMD
M. Smith, NH AGO
R. Kurowski, EPA, Region I
Public Information Officer, DES PIP Office
File AFS# 3300100017